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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

12

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/501,013
Filing Date: February 09, 2000
Appellant(s): BECKMANN, FRIEDHELM

Markus Nolff
For Appellant

EXAMINER'S ANSWER

MAILED
AUG 27 2003
GROUP 1700

This is in response to the appeal brief filed July 7, 2003.

Art Unit: 1771

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Whether or not claims 1 and 3-22 are anticipated by Murch under 35 U.S.C. 102(b). In view of Appellant's comments in the brief, the rejection of claim 2 over Murch is hereby withdrawn.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 2 do not stand or fall together, however in view of the withdrawal of rejection of claim 2, the grouping is moot.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 1771

(9) Prior Art of Record

3,934,066	MURCH	01-1976
4,987,026	JACOBS et al.	01-1991
4,780,359	TRASK et al.	10-1988
5,527,598	CAMPBELL et al.	06-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-22 are rejected under 35 U.S.C. 102(b) as being anticipated by MURCH (US 3934066).

MURCH discloses a fire-retardant, intumescent laminate system suitable for application to combustible or heat-sensitive substrates that comprises an intumescent layer which is a porous sheet material, e.g. paper or foams saturated with an intumescent composition and having a flexible protective layer adhered to the intumescent layer. The intumescent laminate system may include a vapor barrier layer, e.g. aluminum foil and/or a thermal barrier layer, e.g. glass wool or cardboard adjacent to the intumescent layer, and is particularly suitable as a protective, fire retardant overlay on thermally delicate substrates such as organic foams, e.g., polystyrene. (Abstract)

The reference teaches that intumescent coatings are useful fire-retardant coating for protection of combustible, as well as heat-sensitive, substrates. The characteristic feature of all intumescent coatings is that the intumescent composition, upon exposure to heat or flame, swells or puffs up to a relatively thick cellular foam char which possesses heat-insulative and fire-retardant properties. The heat or flame activated reaction causes the intumescent materials to foam and expand into thick cellular foam char and generate inert gases such as nitrogen, carbon dioxide, etc., which are entrapped in the foam and thus prevent the access of air and oxygen to the combustible substrate. (Column 1, lines 13-30).

MURCH teaches the use of flameproofed textile materials in the protective cover layer (this equates to the core layer) and an intumescent layer (that equates to the covering layer). The reference teaches that the characteristic feature of all intumescent coatings is that the intumescent composition, upon exposure to heat or flame, swells or puffs up to a relatively thick cellular foam char which possesses heat-insulative and fire-retardant properties. (Refer to Column 8, lines 23-31; Column 1, lines 15-30).

Regarding claims 14 and 17, *the reference discloses that intumescent coatings have been applied as films, i.e., paints or mastic coatings, directly to the surface to be protected in liquid form by brushing, rolling or spraying.* (Column 1, lines 31-34) The reference teaches that the intumescent layer can comprise a porous sheet material which is impregnated with an intumescent composition; and that the porous sheets may be *cellulosic* or protein materials, synthetic organic polymeric foams and porous films or *inorganic porous materials*. (Column 3, lines 48-59). MURCH further discloses that the porous sheet material may be in a *woven, non-woven* or mixed structure. *The thickness of each individual porous sheet to be impregnated with the intumescent compositions depends on the absorbency capacity of the porous material.* (Column 4, lines 4-15) *Further, MURCH teaches that*

Art Unit: 1771

more efficient intumescent properties can be attained by the addition of blowing agents that decompose at the appropriate temperature. (Column 6, lines 8-10)

Further, the reference teaches that the flexible protective cover layer may comprise more than one layer of material which may be the same or different. (Column 8, lines 43-45). Also refer to Claims 1-21 of the MURCH reference.

(11) Response to Argument

The Appellants argue that the term “core” according to THE COMPACT OXFORD ENGLISH DICTIONARY, 2nd edition (1991), page 337; is defined as “[a] central part of different character from what which surrounds it”, “[t]he interior part of a wall or column”.

It is noted that the provided definition of core is inconsistent with Appellants’ own claims. Independent claim 1 claims a material that comprises: a core layer having at least one outer surface and a covering layer covering the core layer at said at least one outer surface. The language used in the claims indicates two layers. The claim as written does not indicate that the covering layer encloses, surrounds, or encapsules the core layer; further, the “having at least one outer surface” is not specific enough so as to indicate that the covering layer would cover the core layer by surrounding it. For example, the “having at least one outer surface” means that it could have two or more outer surfaces and it could be interpreted for example, as a layer having a first outer surface (that could be an upper outer surface), and a second outer surface (that could be a lower outer surface). Then the language “a covering layer... covering said core layer at said at least one outer surface” could be interpreted as covering for example, the first outer surface producing an insulation material with two layers that are adjacent to each other.

Therefore, the Examiner maintains her position that the “core layer” of the present invention equates the “protective [cover] layer 12” of Murch, and the “covering layer” of the present invention equates with the “intumescent layer 11” of Murch; and not the other way as Appellants concludes on page 8, third paragraph of the “Brief of Appeal” in view of the provided definition for the term “core”.

MURCH teaches the use of flameproofed textile materials in the protective cover layer (this equates to the core layer) and a intumescent layer (that equates to the covering layer). The reference

Art Unit: 1771

teaches that the characteristic feature of all intumescent coatings is that the intumescent composition, upon exposure to heat or flame, swells or puffs up to a relatively thick cellular foam char which possesses heat-insulative and fire-retardant properties. (Refer to Column 8, lines 23-31; Column 1, lines 15-30).

Appellants indicate that Murch shows neither a foamable covering layer nor a core layer containing a fire retardant additive, as recited in claim 1 of the instant application.


The Examiner does not agree with Appellants since the intumescent layer [covering layer] forms a foam when exposed to heat or flame and the reference teaches that the flexible protective layer 12 [core layer] should be flame retardant and among the materials listed are well known flameproofed textiles materials. (Column 8, lines 7-31)

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

NLT
August 20, 2003

Conferees
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Terrel Morris - *FM*
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